IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 304 OF 1988

The Commissioner of Income-tax,
Bombay City-V, Bombay. ...Applicant
V/s.
M/s.Burroughs Wellcome & Co. ...Respondent

Mr.Ashok Kotangle for Applicant.
Mr.Arun Sathe for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 5, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court :-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in computing the disallowance of the remuneration and perquisites etc. paid to the employee-directors of the assessee company the provisions of sec.40(c) and not that of sec.40A(5) of the I.T. Act, 1961

are applicable ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing depreciation on racks treating them as 'plant' ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in directing the I.T.O. to allow extra shift allowance on furniture and fixtures treating them as 'plant' for A.Ys. 1976-77 and 1977-78 ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the I.T.O. to allow investment allowance on furniture and fixtures treating them as 'plant' for A.Y. 1977-78 ?"

. So far as first question is concerned, the same has already been answered by the Division Bench of this

Court in the case of **Commissioner of Income Tax V/s. Hico Products Pvt.Ltd. (No.1), (1993) 201 ITR 567** in favour of the assessee and against the revenue.

. So far as Question Nos.2, 3 and 4 are concerned, considering the minimal tax impact, the same need not to be answered in view of our judgment dated 1st July, 2005, passed in Income Tax Reference No.397 of 1988 **(C.I.T. Vs. M/s.Pithwa Engg.Works)** for the reasons recorded therein, wherein we have relied upon decision of this Court in the case of **C.I.T. vs. Camco Colour Co. (2002) 254 ITR 565**. In this view of the matter, we do not think it necessary to answer Question Nos.2, 3 and 4 referred to this Court for the Assessment Years 1976-77 and 1977-78, having negligible tax effect.

. Reference, accordingly, stands disposed of with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**